

ZONING BOARD OF APPEALS

July 16, 2013

Present: Michael Dudick, Chairman, Jerry Cifor, Mario Fantini, Randy Gifford,
Chris Lemire, Doug Strother

Also Present: Joel Peller, Esq., ZBA Counsel
Steve Myers, Director, Building & Zoning

Absent: Michael Bloss, Jenn Vucetic

Mr. Dudick called the meeting at 7:02 p.m.

PLEDGE OF ALLEGIANCE

Mr. Dudick explained the criteria required for granting a use variance, specifically, the need for proof of financial hardship. He informed that applicants who are present for a use variance and have no written documentation of financial hardship, have the option of deferring to the August 20 meeting if they can produce it at a later time,.

The applicant for MK2CSWAG, LLC (Permits #80924 & 80925) requested to defer to the next meeting.

Mr. Dudick informed applicants this is a seven member board with one alternate, Mr. Fantini. To receive approval an application must receive 4 yea votes regardless of the number of members present. There are six members present tonight. Mr. Jerry Cifor was introduced as the new board member, replacing Amy Standaert. Mr. Fantini sat in for Mike Bloss making a board of six. Mr. Dudick advised applicants if they feel there is a better chance of a full board at the next meeting they can ask to defer, but added that there are no guarantees there will be seven members at any meeting.

OLD BUSINESS:

The secretary read the legal notice as it appeared in the Daily Gazette on July 11, 2013.

1)An application from Ray Sign for two variances from Section 171. Applicant requests second freestanding sign on parcel. Current sign is pre-existing, non-conforming due to separation of property into three parcels. 1) 2nd freestanding sign is use variance 2) Area variance needed for front setback for new sign. 15' required, 1 foot setback requested, Variance required = 14'. Property is located at 3 Northside Drive, Clifton Park, NY 12065 (Permit #80915)

The application was presented by Gavin Vuillaume, representing the applicant. The two applications were discussed as one. Mr. Myers summarized the applications. He informed the original applications have been modified for better compliance and less variance. He explained the problem is the current sign represented three businesses on the same parcel, but that parcel was divided, making three parcels. Chili's and Comfort Suites are no longer on the parcel making the sign more non conforming. The original proposal was to add Delmonico's to the existing sign, but they cannot do that as it makes it more non-conforming. Delmonico's now proposes to erect their own freestanding sign on the Rt 146 side, the existing sign with Chili's and Comfort Suites is to be removed and placed in the right of way on the access road, as is, using the same panels that are there. Delmonico's wants to put up their own sign of 8 square feet in the location of the current. He concluded that this eliminates the need for use variances, and the creates the need for area variances 1) for the setback for the freestanding sign for Delmonico's on 146 2) Delmonico's directional sign is 8 sq ft and the law allows 2 sq ft 3) the Comfort Suites and Chili's signs are 24 sq ft each and will be used as directional signs. He summarized that he feels this is reasonable compromise as those businesses have been there for years and the parcel has now been subdivided. He added they will not have to purchase new signs. He suggested this eliminates the use variances and seems to satisfy the businesses. Mr. Myers informed he believes that Gavin Vuillaume has the authority to represent all three businesses, Abele, Carnivale for Comfort Suites, and Delmonicos.

Mr. Peller asked for documentation, and Mr. Vuillaume stated he has some paperwork to that effect.

Mr. Lemire asked for clarification as to whether the only sign that will be on the Delmonico's property will be the Delmonico sign and asked where the Chili's sign will be. Mr. Myers responded Delmonico's will have a single sign and the Chili's and Comfort Suites sign will go on the north side of the common access road (owned by Abele).

Mr. Dudick asked it be stated for the record that this is now an off site sign, but it wasn't originally when it was placed there. Mr. Myers agreed that it was all one parcel at the time the sign was erected and was allowed. Mr. Dudick commented this is not a "granted" offsite sign, but became one because of the division of the lots.

Mr. Lemire asked for clarification that instead of one non conforming sign, it will now be two signs, one on one side of the road and one on the other, both conforming. Mr. Myers agreed, adding there is no longer a need for a use variance, only area variances. Mr. Lemire asked if it

wouldn't be better to have only one set of signs rather than two sets. Mr. Myers said he can't justify making the existing sign more non conforming and Delmonico's wants their sign in front of the building.

Discussion ensued between Mr. Myers and Mr. Lemire regarding the location and non conformance of the current sign. Mr. Myers explained that if Delmonico's adds its name to the current sign, it makes it more non-conforming.

Mr. Peller asked Mr. Myers if the board should consider the two applications together. Mr. Myers said "yes". Mr. Peller asked that the second application be read into the record.

The secretary read the legal notice as it appeared in the Daily Gazette on July 11, 2013.

2) An application from Ray Sign for a variance to add panel to existing non-conforming sign. Business represented on current sign is no longer on the same parcel as the current sign. As a result the variance required is a use variance from Section 208-97B which does not permit enlarging, extending, reconstructing or substituting or structurally altering a non-conforming sign. Property is located at 3 Northside Drive, Clifton Park, NY 12065 (Permit #80916)

Gavin Viillaume, Environmental Design Partnership, representing Delmonico's and Abele Builders, presented the applications. Mr. Peller asked for written proof of representation. In response, Mr. Viillaume presented an e-mail from them.

Mr. Viillaume stated Delmonico's is asking for a 24 sq ft sign and a five foot setback variance.

Mr. Lemire asked if it is the same location as the existing sign and was told it is almost in the same place. Mr. Viillaume discussed the need for an 8 sq foot directional sign as the location is difficult to find. He pointed out the locations on the plot plan. He added they are removing the existing sign and moving it to the North side of the road.

Mr. Lemire asked if the variances are before the board. Mr. Myers said they were approved signs from before. Mr. Dudick added they are changing the freestanding sign that was on the same lot to directional signs which have a smaller allowance. Mr. Lemire asked if those variances are before the board, and Mr. Dudick answered they are.

Mr. Lemire asked where the old sign would be located. Mr. Myers explained the sign would be on the deeded access road for all three businesses. Mr. Lemire asked why it is going to be moved to the North side. Mr. Dudick explained it would not require a use variance.

Mr. Myers responded to Mr. Dudick and Mr. Lemire saying the sign remaining on Delmonico's property would require a use variance. He added, moving it to the North side of the road, which is a common access road, and making it directional sign, not a free standing sign (which would have to be on their parcel) is allowed according to the law because the access is not their property but is deeded.

Mr. Lemire asked what is a deeded access road and what is the difference. Mr. Myers explained the sign is now on Delmonico's property and not on the access road which they can legally use. Mr. Lemire asked if the sign could be moved to the south side of the road. Mr. Myers answered they could put it there, but it works better on the north side. He said the intent is to call them all directional signs but allow them to keep them at 24 square feet as it is the only sign they will have, and that they have agreed to not ask for another freestanding sign.

Mr. Lemire asked if Delmonico's would want a 24 square foot directional sign. Mr. Myers said they did not ask. Mr. Lemire commented he didn't know why they just didn't take the sign from the north side and move all three signs to the south side, which, to him would be cleaner than one sign on one side and two on the other side.

Mr. Vuillaume responded it would block the pet store sign if all three signs are put there. Mr. Myers pointed out that the law also says no two freestanding signs can be within 50 feet. He added if you put all three signs together it would be difficult to call them a directional and they would be within ten feet of each other. He suggested that if Delmonico's is happy with the freestanding sign and the directional sign they should let them do it.

Mr. Peller asked if Chili's and Comfort Suites have agreed not to put up freestanding signs. Mr. Myers answered that is his understanding. Mr. Vuillaume said this was said in conversation with Ed Abele. Mr. Myers stated they could get something in writing.

Mr. Myers and Mr. Vuillaume explained to Mr. Lemire that the sign could not be placed on the south side of the road because there is no room to put it there without moving the road. Mr. Myers added there would also be an issue with visual site. He explained that they want to keep the 24 sq ft sign as a directional sign because it is the sign they have had for years. He said he had told them they could have their own freestanding signs on their own properties, but they were not interested and wanted the signs they had as directional signs.

Mr. Dudick commented they clearly have a need for directional signs. Mr. Lemire asked Mr. Vuillaume if he was here for Chili's and Comfort Suites as well as Delmonico's. Mr. Vuillaume said he is.

Discussion ensued as to the fact that Chili's and Comfort Suites would have to give up their sign in order for Delmonico's to erect its own sign.

Mr. Dudick said there is a long history of those signs being there and the size has already been set and if it had not been for the parcel division, they would be asking for a variance.

Mr. Vuillaume informed he has been talking to Mr. Abele, who spoke with Comfort Suites but he had not talked directly with them. Mr. Myers said he needs to get in writing that they all concur with this agreement. He said it was his understanding when they spoke yesterday that is what they would do.

Mr. Dudick stated that problem was not present in 2000, but now that the parcel is divided it is causing a headache with area and use variances. He said he is not a fan of a use variance but in this case it makes sense.

Mr. Lemire pointed out Delmonico does not need a use variance to put up a sign, and the other two are the ones with the non conformance signs and they should be here asking for a use variance.

Mr. Dudick stated he doesn't have a problem with the original setup of putting the third panel on the original sign for the use variance because it was approved until the new property lines were drawn. He asked the other members if they agreed, and many did.

Mr. Lemire reminded the board does not have to exclude one of the elements for a use variance. He suggested that if Delmonico's takes down the Comfort Suites and Chili's sign, they could prove financial hardship, but pointed out they are not here. Mr. Dudick agreed they would need some sort of financial documentation and added it is not Delmonico's use variance.

Mr. Myers disagreed stating it is on Delmonico's property. Mr. Lemire suggested that they can take down the sign. Mr. Myers said that is what they are trying to avoid. He explained that as long as the sign stands as it is, it is pre-existing, non-conforming but they cannot add to it. He told Mr. Lemire that Delmonico's cannot just take the sign down, as it was put up legally.

Mr. Lemire argued that Delmonico's has the right to take the sign down if they want and Mr. Myers again disagreed saying it was put up legally.

Mr. Strother said he would be in favor of supporting adding the third sign to the existing sign, contingent on written approval of all parties.

Mr. Dudick reminded they still need written evidence that not having the sign would cause financial hardship.

Mr. Lemire asked if they could put 2' square directional signs on off site property. Mr. Myers said no, that you would need a use variance.

Mr. Dudick asked Mr. Vuillaume if he could come back with some sort of financial evidence that not having signs would cause financial hardship and he answered he thought he could.

Mr. Dudick said the board would like to see the original application again, but they have to comply with the law. Mr. Vuillaume asked if they would rather see the sign stay as it is and go for the use variance and Mr. Dudick responded they would.

Mr. Peller asked Mr. Myers if they add a panel on the sign, would that make it more non-conforming. Mr. Myers asserted it would and suggested if they grant the use variance it would include the addition of the panel and would keep the sign where it is. Mr. Myers reminded this doesn't help Delmonico's now because they need a sign on the road.

Mr. Vuillaume informed the opening of the restaurant is scheduled for the end of the month.

Mr. Myers promised he would grant them something temporary until this is worked out. Mr. Lemire again asked about the proposed signs of Delmonicos, and was shown pictures.

Mr. Peller asked Mr. Vuillaume if he was ok adjourning until August 20.

Mr. Dudick informed there are two options for the board to consider 1) two signs with area variances or 2) one sign with similar size panels all pointing down the same road.

Mr. Vuillaume stated they don't care either way. Mr. Dudick repeated, the applicants are flexible.

Mr. Fantini inquired as to whether it was necessary for Comfort Inn also to be represented. Mr. Dudick said yes, and it would be a use variance for Comfort Inn and Chili's and up to them to prove financial hardship.

Mr. Dudick took a straw poll whether to go with the new version or old version even though the old version would be greater non-compliance.

Fantini – old version Ciphor – agreed, old version; Gifford – original plan; Dudick – original version Strother – new version because it brings it into better compliance and traffic safety, 2 signs; Lemire – stated he doesn't see what is the area variances before them published so it wasn't part of the application so he is in favor of adjourning and re-noticing.

Mr. Dudick stated they will adjourn for the next meeting. Mr. Peller suggested Mr. Myers meet with the applicants. Mr. Myers said if they are going with the original plan, it doesn't have to be re-noticed, that they modify variances in the hearings.

Mr. Vuillaume asked if they want it re-noticed with Comfort Inn. Mr. Dudick said he wasn't sure it had to be re-noticed but it wouldn't be harmful to re-notice with the proper names on there. Mr. Myers said he will have to re-do the notice to include Comfort Suites and Chili's.

Mr. Peller assured Mr. Vuillaume they would get Delmonico's a temporary sign before the opening.

Mr. Peller asked Mr. Vuillaume if he would waive the 61 day rule, and Mr. Vuillaume agreed. Mr. Dudick informed Mr. Vuillaume that all three, Delmonico's, Comfort Suites and Chili's need to be there.

Application deferred until August 20, 2013.

NEW BUSINESS:

The secretary read the legal notice as it appeared in the Daily Gazette on July 11, 2013.

1) An application from John Swantek for a variance from Section A217-98A which requires a 25' rear setback setback from property line. Setback requested = 22.6', variance required = 2.4'.

Property is located at 20 Old Coach Road, Clifton Park, NY 12065 (Permit #80919)

The application was presented by John Swantek, owner of the property at 20 Old Coach Road. He stated they wish to build a three season sunroom attached to his house. They had the plans

drawn and realized they came too close to the back property line. The bordering property is a common area owned by the town.

Mr. Strother commented this is straightforward and the variance is needed to stay in compliance. He informed he would support the application and is prepared to make a motion.

Mr. Gifford agreed that he has no problem with the application. Mr. Dudick added this is not a large request.

Mr. Dudick announced the public hearing and asked for comments. There were none. Mr. Dudick made the motion to close the public hearing. Mr. Lemire seconded. All approved. Public hearing closed.

Mr. Gifford made the motion to approve the application as submitted. Mr. Cifor seconded.

Ayes: Lemire, Strother, Dudick, Gifford, Cifor, Fantini Noes: none

Application approved as submitted.

The secretary read the legal notice as it appeared in the Daily Gazette on July 11, 2013.

2) An application from Faith Baptist Church (Paul Taddeo) for 1) a use variance from Section 171-4(n) of Town law, which prohibits animated signs in a CR Zone. 2) an area variance for size proposed. 40square ft requested; 24 square feet allowed; variance required = 16 square feet.

Property is located at 11 Glenridge Rd, Rexford, NY 12148 (Permit #80920)

The application was presented by Paul Taddeo, employee and Project Manager for Faith Baptist Church, and Rich Olsen from Olsen Signs.

Mr. Dudick asked if he has the church's permission to speak on their behalf and Mr. Taddeo assured he does.

Mr. Taddeo explained the proposal to replace the old 32 square foot sign, which he commented is an eyesore, with a new LED sign. He asserted it will be clearer and more professional. He explained the top half is static and the bottom half is LED, which would change every five seconds. The new sign is 40 square feet.

Mr. Cifor asked if the location of the new sign will be the same location as the old one. Mr. Taddeo responded it is, and that it is 15' off the required code.

Mr. Gifford reminded that the board has a time limit as to the number of times a sign can change.

Mr. Dudick said there have been precedents set with the other churches. He asked Mr. Myers to read them:

- 1) Text only display; background with two colors
- 2) 3 line message limit
- 3) no flashing, scrolling or moving text or images
- 4) automatic light dimming at 0 .3 footcandles above ambient light
- 5) sign will not change more than once every 24 hours
- 6) no messages other than church related events

- 7) hours of operation 6am to 11pm
- 8) eliminate the use of any other temporary banner on the property agree to allow town to post an emergency announcement if needed

Mr. Dudick explained this is a new technology and the board has had multiple requests for LED signs. He stated there are many houses of worship and the board doesn't want to have them all flashing, so they have come up with the decision to allow the sign changing once every 24 hours. He added if they change the message at noon, they could have two messages a day, and they can have different messages on each side of the sign.

Mr. Taddeo asked why some signs in town change more frequently.

Mr. Peller explained there are different zones in the town and, for example, the mall changes more often because it is in a different zone.

Mr. Dudick commented that houses of worship tend to locate in or near residential zones not usually in commercial zones.

Mr. Strother pointed out that if they have a leader board, they would not be changing it more than once a day, and that is what the board tends to think about when setting that limit.

Mr. Dudick told Mr. Taddeo that if their church is willing to go along with what the board has established as a standard for other houses of worship, this would be an easier application, but they would have to be willing to accept all the stipulations.

Mr. Olsen asked if each one is considered on a case by case basis and Mr. Dudick answered that it is. Mr. Olsen then questioned if they could ask for four messages. Mr. Dudick answered they can, but if they are willing to go along with what has been done before, the board has already approved those things. All things being the same, he informed it makes it a much easier decision for the board. He added that every case is unique and if Mr. Taddeo feels his church is different, the board will be happy to listen to what they believe makes their church a unique situation different than the ones they have heard before.

Mr. Robert Port, Executive Pastor Faith Baptist Church, spoke. Mr. Port told the board they are willing to go along with the guidelines. He asked if the guidelines change in the future, would they be able to change with them. Mr. Dudick responded that if they think at a later time that they were too restrictive then the town would probably change and loosen up the law. He added now the town law doesn't even allow for LED signs to be placed in the area where they are located so this would be a variance approval with restrictions. He asked Mr. Port if he is willing to go along with the restrictions, and Mr. Port agreed.

Mr. Fantini asked if this is a size variance also. Mr. Dudick stated this sign is smaller than the last one. Mr. Myers answered Christ Community Church was 85 square feet and this sign is 40 square feet.

Mr. Strother questioned if this includes the whole sign. Mr. Myers informed the base is not included. Mr. Dudick repeated this is a smaller sign.

Mr. Dudick announced the public hearing and asked for comments. There were none. Mr. Gifford made the motion to close the public hearing. Mr. Strother seconded. All approved. Public hearing closed.

Mr. Strother made the motion to approve the application with stipulations. Mr. Cifor seconded.

Mr. Myers asked if the approval will include the area variance. Mr. Dudick answered it does. Mr. Dudick explained to Mr. Taddeo that houses of worship are unique with regard to having to meet the financial hardship requirement due to the difficulty of showing financial hardship for a non profit house of worship. He added that has been discussed at previous meetings. He alluded to the law which allows greater latitude for a use variance for houses of worship.

Ayes: Fantini, Cifor, Gifford, Dudick, Strother Noes: Lemire

Application approved with stipulations.

The secretary read the legal notice as it appeared in the Daily Gazette on July 11, 2013.

3) An application from Richard & Suzette Turpin for a variance from Section 208-11. Property is located in PUD with underlying R-1 zoning controlling setbacks. Side setback required=10'; 5' requested; variance required = 5' Property is located at 1 Briarfield Dr, Clifton Park, NY 12065 (Permit #80921)

Mr. Richard Turpin, owner of the property of 1 Briarfield Drive, presented. He indicated they are asking for a 5' side setback variance to put an addition to their home. He stated the addition would be connected to the garage and is being build for their daughter who has MS.

Mr. Turpin, in answer to Mr. Lemire's question, explained the map and how the whole triangular space would be the addition.

Mr. Myers stated he has no problem with the addition and that it is next to town property which is town maintained.

Mr. Dudick announced the public hearing and asked for comments. There were none. Mr. Gifford made the motion to close the public hearing. Seconded by Mr. Lemire. All approved. Public hearing closed.

Mr. Dudick asserted this is not a lot of change or impact on the other homes and is a small request. Mr. Lemire asked the dimensions across the front of the house. Mr. Turpin informed it was ten feet.

Mr. Fantini made the motion to approve the application as submitted. Mr. Lemire seconded the motion.

Ayes: Strother, Dudick, Gifford, Cifor, Fantini, Lemire Noes: none
Application approved as submitted.

The secretary read the legal notice as it appeared in the Daily Gazette on July 11, 2013.

4) An application from John K & Deborah L Hill for 1) a use variance from Section 208-97B(2)(c) Proposal is to increase nonconformance by demolishing a 1200 sq ft house, combining lots and constructing a 1400 sq ft house in a different location 2) a variance from section 208-11 which requires 40,000 sq ft for parcels without public sewer. New septic system proposed. Total area = 21,109 sq ft; variance required = 18,891 sq ft. Property is located at 144 East Side Drive, Ballston Lake, NY 12019 (Permit#80922)

Mr. John K. Hill, co-owner of the property with his wife, Deborah, presented the application. Mr. Hill provided background. Their neighbor passed away and the property was abandoned for a year. He and his wife then purchased the home in January from the neighbor's mother with the intent to rehabilitate the home for their son. In March they found the ceiling and the floor had collapsed and the bathtub was in the crawl space. He said he hired several people to look at it and was told they couldn't fix it. He stated the insurance company cancelled their liability insurance because the structure was collapsing. He explained he then went to Mr. Myers to get permits to take down the home and garage and applied to come for a variance. He showed a map with the proposed new home and pointed out most of the neighbor homes are non-compliant. He indicated they wish to build a 31' x 44' modular home which would be slightly more than 1200 square feet. He informed the previous home was smaller than that. He reported they hired a sanitary engineer to do perk tests and is going to put in a septic field and they plan to do work on the existing well. He added that their home is about 100 yards away from the location and the other lot is vacant but the neighbor has no intentions to do anything with it.

Mr. Peller asked Mr. Myers if he had given Mr. Hill a permit to demolish. Mr. Myers confirmed he did, and wrote on the permit that there is no guarantee to rebuild on the parcel or to get the variance. Mr. Hill agreed that is true.

Mr. Peller mentioned this is not the same building envelope. Mr. Myers confirmed that is correct, that it is a non conforming lot with or without the building, but he has combined lots to make it a bigger lot but it is still non conforming.

Mr. Cifor asked if he plans to have a basement or slab. Mr. Hill responded they plan to put in a basement.

Mr. Dudick pointed out that all of the lots are non-conforming and go back to when they were seasonal bungalows in the 1920's and 1930's but now they have become year round residences. He told Mr. Hill combining the two non- conforming lots to make a larger lot is going in the direction the board likes. He said the board understands people like to live near the lake, and this is a unique area. He commended Mr. Hill for taking the house down for safety reasons.

Mr. Hill said they took it down on advice of legal counsel and now were able to get a liability binder.

Mr. Peller asked if there is one deed or two for the parcels. Mr. Hill said he isn't certain. Mr. Dudick asked if he was willing to stipulate that if it is two lots he would combine them. Mr. Hill

stated surveyor Van Guilder said it is now one lot but if it isn't, he said he would create one lot. Mrs. Hill informed it is one deed and one lot. The Hills promised they are willing to stipulate they will combine lots if there are two.

Mr. Lemire asked Mr. Myers if this is a use variance because it was non-conforming and is now non-conforming again. Mr. Myers answered "correct".

Mr. Lemire pointed out that in order to approve a use variance the applicant must meet certain requirements, namely demonstrating unnecessary hardship to the board. He explained they must show 1) they cannot get a reasonable return as shown by evidence 2) hardship is unique and does not apply to substantial portions of the neighborhood 3) variance will not alter the essential character of the neighborhood 4) alleged hardship has not been self created. Mr. Dudick added all elements must be met.

Mr. Dudick listed the elements, explaining each one as it applied to Mr. Hill's application:

- 1) it is not self created - the house was collapsing
- 2) it does not alter the essential character of the neighborhood – improves in a positive way
- 3) unique hardship – the whole area is very unique in the town
- 4) cannot realize reasonable return – Mr. Dudick pointed out Mr. Hill needs to provide competent financial evidence of hardship

Mr. Hill said he could and mentioned the insurance binder. He later apologized that he had brought the wrong binder. Mr. Dudick asked if they received something in writing notifying them of cancellation of insurance. Mr. Hill said he did, that they were cancelled by the insurance company, but he did not have it with him. He added that there were other issues, namely that the septic system was right next to the well and did not conform at the time of purchase.

Mr. Dudick said, in his opinion, Mr. Hill's financial hardship was created by the collapse of the house, causing loss of value which caused the insurance to be cancelled. Mr. Dudick asked Mr. Hill if he has anything in writing proving the house had to come down. Mr. Hill said the insurance was cancelled.

Mr. Peller asked if Mr. Myers or the health inspector saw the house before it came down. Mr. Myers said they were never requested to inspect the house. He said he did not inspect it personally but someone in his office could have seen it. Mr. Hill offered photos showing the damage inside the house.

Mr. Dudick asked if the house was assessed before purchase. Mr. Myers answered he would have to check on that. It was then determined there was no tax bill for this year as bills are sent in September.

Mr. Hill stated he paid \$70,000 for the home and it was never their intention to do anything but rehabilitate the house.

Mr. Dudick said everything sounds desirable and reasonable but told Mr. Hill he is lacking in the documentation to show the hardship you would incur if the variance were not granted. Mr. Hill asked if that is other than they paid \$70,000 for a vacant lot. Mr. Dudick asked if he could provide the board with something that showed they paid the \$70,000. Mr. Hill offered to show them the checkbook.

Mr. Lemire suggested if Mr. Hill would get the closing statement and proof of insurance cancellation to show the house was falling down, he thinks that would satisfy the element of written proof of financial hardship.

Mr. Hill asked if the board would stipulate that, and he would get the documents to Mr. Myers. He asked if the board would give them a window as they have to close on the modular the first week of August. He stated he would assure them he could get that paperwork and a document from the builder.

Mr. Peller asked Jacqueline Murray (attorney), who was present for another application, if she remembered attending the closing, as her firm represented the Hills. Mrs. Murray stated she and her husband were on vacation at that time and it must have been another person in their office who was present at the closing for them.

Mr. Dudick asked Mr. Hill if he would like to go home and try to find the documentation of the money they paid, closing statement and the insurance notice saying the home needs to be demolished. Mrs. Hill said she is not sure if they still had the insurance letter and Mr. Hill has a tendency to shred those things.

Mr. Peller asked if there is a mortgage. The Hills responded they took out a home equity loan on their home to purchase it. Mr. Dudick stated that anything they have would be better than what they have now. He said he will hold off the public hearing until the Hills retrieve some material.

Mr. Dudick called for a five minute break.

The secretary read the legal notice as it appeared in the Daily Gazette on July 11, 2013.

5) An application from John Sotile for variances from CR zoning Section 208-16E(2)(a) & (c) 1) part (a) one dwelling unit per 3 acres allowed for parcels less than 10 acres originally. After subdivision existing dwelling will be on 1.78 acre parcel. Variance required = 1.22 acres 2) Part (c) one time subdivision allowed on lots existing prior to 1-1-05. Variances required for 1) initially both new lots owned by family members 2) only permitted on existing lots greater than 10 acres 3) new lots must be a minimum of 2 acres Property is located 9 Bradt Road & 11 Glenridge Rd, Rexford, NY 12148(Permit#80923)

The application was presented by Duane Rabideau, Van Guilder Associates, representing John Sotile. He stated they are here because the applicant and the Catholic Church wish to make a lot line adjustment. He showed on the map the present lot line and the proposed lot line. He explained that Mr. Sotile has allowed the church to use part of the parcel for special events and now wants to give them a chance to purchase it.

The remaining part of the parcel will be retained as a residence and the lot size will be 1.78 acres which is the size that matches the character of the neighborhood.

The CR zoning requires a three acres minimum lot and their contention is that by getting the lot smaller it actually matches the build-out in the area.

Mr. Rabideau showed a map indicating the CR zoning area which borders Mr. Sotile's property. He asserted that the intent of the zoning change was to protect the open spaces but for some reason the area included Bradt Road which had already been built out with lot sizes less than an acre. He alluded to the area south of Route 146 zoning which is hamlet mixed use as one of the most intensely used in town.

Mr. Fantini asked Mr. Rabideau if they have a contract with the church and he responded they do.

Mr. Dudick commented this does not strike him as being a problem. He asked if the property is being purchased or being given. Mr. Robideau responded it will be purchased. Mr. Dudick asked if the church is planning to build any structures and was told not in the foreseeable future.

Mr. Dudick agreed that in 2007, when the zoning was created, it created an incumbrance on the property owners in that area. He added that it seems reasonable to him to change over the property lines.

Mr. Lemire asked the size of the lot and Mr. Rabideau answered again it was 1.78 acres. Mr. Myers added that it is 80,000 square feet.

Mr. Lemire quoted 208-16E(2)(a) and asked if that does not satisfy it. Mr. Myers responded it does not because he is reducing his current lot to less than 3 acres but if he had an existing parcel that was within those parameters prior to the zoning he would be able to put up a structure.

Mr. Dudick repeated he doesn't see any problem and has no concerns with this as it is still a significant size lot.

Mr. Lemire asked Mr. Myers about 208.16E 2a & 2c which talks about family members he said he understood. He asked if because the lot was already developed, the 20,000 feet requirement doesn't apply? Mr. Myers said that is correct because the original parcel was more than 3 acres. Mr. Myers further clarified the code for Mr. Lemire.

Mr. Dudick announced the public hearing and asked for comments. There were none. Mr. Gifford made the motion to close the public hearing. Mr. Strother seconded. All approved. Public hearing closed.

Mr. Strother announced he supports Mr. Dudick's opinion, that given the different shapes and types of lots in the area, this is a minor accommodation and it looks better as two lots than one.

Mr. Robideau explained the reason it is shaped like that is because at one time it was two lots and it was purchased to prevent any more residential lots from coming in.

Mr. Dudick made the motion to approve the application as submitted. Mr. Cifor seconded.

Ayes: Fantini, Cifor, Gifford, Dudick, Strother Noes: Lemire

Application approved as submitted.

Mr. Rabideau informed he is also representing the next two applications (MK2CSWAG, LLC (Permits #80924 & 80925) and requested to defer to the next meeting.

The secretary read the legal notice as it appeared in the Daily Gazette on July 11, 2013.

6) An application from RD#1 Werner Road, Ltd for a use variance from Section 208-64(1) to operate a private non-profit preschool for special needs children. Code does not allow schools in the LI Zone.

Property is located at Fairchild Tech Park, Ushers Road, Clifton Park, NY 12065 (Permit#80926)

The application was presented by Jacqueline Philips Murray, attorney for the applicant, Helping Hands School and by Tom Address from ABD Engineering Surveyors, also representing Helping Hands. Mrs. Murray submitted proof of mailed notice for the record.

Mr. Address stated the buildings have been approved for the Fairchild site plan. He explained the layout of the Fairchild subdivision and the buildings, showing specifics on the map. He also pointed out the road and entrance-ways and indicated how the children would arrive at the school.

Mr. Address explained that Helping Hands is hoping to lease 10,000 square feet. He described Helping Hands as a private non profit school for 3-5 year olds with special needs which is now located in Halfmoon. It has a staff of 65 people and approximately 200 children. Their current position is they need a building to meet state requirements which are regulated by the State and Family and Child Services. He asserted the facility they are in now does not meet those standards, which includes bathrooms, handicap and safety issues. He explained the school does not need exposure and it is publicly funded, but it does need square footage and dollar value. He informed the leasing average is \$18 a square foot which is more than they can afford. This site could be built to their needs at a reasonable rate, one of the reasons being that it is an industrial zone.

Mr. Address pointed out that the areas in town which are zoned to allow schools are either too expensive or high demand or high traffic areas. He suggested the zoning regulations for this area don't specifically mention schools. He asserted this is an ideal area as it is at the far end of the site with a large parking lot and pointed out that arrival and departures of both children and staff would be at times other than peak traffic times.

Mr. Lemire asked about busing. Mr. Address answered that there is some busing, but they are private van buses. He pointed out the other location they had considered is on Rt 146 where there is too much traffic.

Mr. Gifford asked if there will be a playground if it will be fenced in. Mr. Address responded that the tractor trailers will be in coming in and out at another area, and they will have a playground with fencing which is in the plan.

Mr. Dean Taylor with Remax Real Estate also spoke. He stated he has been working with the school for a while. He asked Ms. Diane Burke, executive director of Helping Hands to address the Board. Mr. Strother asked Ms. Burke if she would elaborate on how they will meet the health and safety of the children.

Ms. Burke showed the area which will be fenced in, and pointed out where buses will pull up to the front of the building. She explained the staff comes out and takes each child off the bus and by the hand to walk them into the building as they are only 3 & 4 years old.

Mr. Dudick asked if this is standard procedure, and if it is state procedure. Ms. Burke answered it is policy they established. She added they also do not allow cars to be moving in the parking lot when the children are getting on or off the bus.

Mr. Peller asked if the school is chartered by the Board of Regents. Ms. Burke responded to the question explaining they meet the definition of a private school under 44.10 under the education department. Mr. Peller asked Mr. Myers if he had checked to see it was classified as a private school and Mr. Myers affirmed it is. Ms. Burke stated it is a school, not day care.

Mr. Strother asked Mr. Address if he would demonstrate where the trucks will go, and also if they are going to develop further into that parcel and how it could impact that building.

Mr. Address showed where the tractor trailers go and loading dock access. He explained the whole front of the building will be office and only an occasional UPS truck would be there. Mr. Strother asked how the other consumers get into the building. Mr. Address demonstrated the entrance routes for cars and trucks and assured the other part of the parcel would also be light industrial. He showed Mr. Lemire where the buses would come in and where the children would be dropped off.

Mr. Dudick asked if there is a possibility of a secluded drop off behind the building. Mr. Address pointed out that the area is storm water management.

Mr. Gifford stated he lives in that area and does not see much truck traffic. Mr. Dean agreed that is typical of that space of light industrial. He explained that different companies get deliveries only a few times a week and much of the traffic is vans.

Mr. Strother asked what the prospective building plan is for the property south of the building. Mr. Address answered it will be light industrial, but access would be through Van Patten Drive.

Mr. Lemire asked them to speak as to why the hardship is not self created and why they cannot get a reasonable rate of return elsewhere.

Mrs. Murray responded, submitting a letter from the real estate agent who knows values of property rental. She explained the school can't afford to locate in a B-1 zone where use is

permitted and as a not for profit school it must find something that is financially suitable for special needs children. She asserted it is not about a reasonable rate of return but whether it is viable at all. She informed the school serves 19 school districts and the current setup has four separate buildings with rooms that are not fully compliant for developmentally disabled children. No other properties in town meet their dollar needs. She added this location would improve the school and benefit the community. She informed Mr. Taylor has shown the school ten other sites, none of which met their needs or were not affordable. She stated they cannot make it work until they get out of the \$18 a square foot range.

Mrs. Murray asserted the hardship is not self created, that is it just that the Town did not believe that a school should be in a light industrial zone.

Mr. Lemire questioned how many students are enrolled and how many staff.

Mrs. Murray answered 32 years at the current site with about 160 students, which fluctuates, and 65 staff members.

Mr. Lemire asked for further explanation of the \$18 a square foot cost. Mrs. Murray explained the rate they will pay is \$12.66 per square foot including the setup, whereas the other sites averaged \$18. She explained the current site is \$9.88 per square foot, but is not compliant.

Mr. Taylor explained that many sites are advertised at \$13.50 - \$14 per square foot, but when you add the common area charges it comes up to \$18.

Ms. Burke responded to Mr. Lemire's question regarding number of buses. She explained there are two half day sessions so that would be 8-10 buses twice a day.

Mr. Strother asked if the education department would have a problem with locating the school in an industrial area. Ms. Burke answered she has not spoken to them yet.

Mr. Dudick queried what is the main motivator for the move beside the size and the current zoning.

Mr. Tony Prisli, President of the Board of Directors for Helping Hands responded by listing the motivators 1) multiple buildings on current site, and young children going outside in the winter 2) rent cost. They currently pay a fixed fee rent, but they pay all the maintenance. They are funded by the county and have received no rate increase in five years. 3) current buildings are 30 years old and maintenance in future are unknown and would be substantial.

Mr. Peller asked the relationship between the CORP and Helping Hands. Mrs. Murray answered Helping Hands is a DBA.

Mr. Dudick announced the public hearing and asked for comments. There were none. Mr. Strother made the motion to close the public hearing. Motion seconded by Mr. Lemire. All approved. Public hearing closed.

Mr. Dudick commented this is a use variance and a unique situation and there is no school zoning in the town. He summarized they don't want children in high traffic areas and this seems to fit where a private school should go. He asked how long they have been looking.

Mr. Taylor responded he has been looking for a site for the school for two years.
Mr. Lemire asked if the school is only for 3-5 year olds and if there was any plan to expand.
Mrs. Birck answered it is only 3-5 year olds and there are no expansion plans and a moratorium on growth.

Mr. Dudick stated he has no problem with the application and it is a reasonable use.
Mr. Myers agreed he has no problem with it. He speculated it might have to go to the county for approval.

Mr. John Hill, resident, stated he had attended a town meeting where the discussion was that Ushers Road is a town road.

Mr. Gifford made the motion to approve the application as submitted with the stipulation that if it needs to go to county, it receives county approval. Mr. Strother seconded the motion.

Yeas: Strother, Dudick, Gifford, Cifor Noes: Lemire, Fantini

Application approved with stipulation. (It was later determined Ushers Road is a town road and there is no need for County approval.)

Mr. Hill returned with documentation and hearing for his application continued.

An application from John K & Deborah L Hill for 1) a use variance from Section 208-97B(2)(c) Proposal is to increase nonconformance by demolishing a 1200 sq ft house, combining lots and constructing a 1400 sq ft house in a different location 2) a variance from section 208-11 which requires 40,000 sq ft for parcels without public sewer. New septic system proposed. Total area = 21,109 sq ft; variance required = 18,891 sq ft. Property is located at 144 East Side Drive, Ballston Lake, NY 12019 (Permit#80922)

Mr. Hill returned and stated he had shredded the letter from the insurance company but submitted a statement of sale, a copy of the checks issued establishing proof of cost of the purchase of home and property. He said he has insurance of liability for the property, but the other insurance company canceled them. He explained that Capital Bauer said they would write the policy contingent on repair of the house, but when the underwriters inspected the house, they canceled.

He suggested no one would pay \$71,000 for a 20,000 square foot property on East Side Drive, that the price was for the house as well.

Mr. Dudick said he has established proof of cost of property. Mr. Hill added "house".

Mr. Gifford asked if they had an inspection on the house. Mr. Hill said they did not, when they purchased it, they agreed the house needed repair and they waived inspection.
Mr. Strother asked if the board approves the application, can they make it contingent on getting the letter from the insurance company as it is significant proof of hardship. He said the hardship exists, the question is whether it was self induced.

Mr. Lemire explained they are looking for something that indicates they purchased the home, not knowing it was falling down, and that they can show proof the house fell down after they bought it.

Mr. Hill said Mr. Vanslyke (builder) inspected it and he could get a letter from him. Mr. Lemire said they need something that verifies it was falling down. Mr. Hill said he would deliver that to Mr. Myers' office tomorrow afternoon.

Mr. Strother indicated he would like a testimony from Bill Vanslyke and a paper trail as to what happened with the insurance company.

Mr. Hill said there are photos of the damage.

Mr. Lemire said the question is if it was self induced hardship.

Discussion ensued as to what types of proof is required. Mr. Lemire summarized that they don't have the evidence of financial hardship and suggested that Mr. Hill can either table the application until he can bring the evidence and waive the 61 day period, or he can ask the board to vote on it tonight based on what he has presented. Mr. Hill asked if they could approve with the stipulation he provide the information.

Mr. Dudick said they could not and explained the question is showing proof he was denied insurance for the building, showing that is why it was torn down because it was in bad shape. He explained that to show the insurance was canceled is strong proof. He continued; if Mr. Hill can't come up with that, a letter showing it was in such bad shape it had to be torn down is less than the insurance cancellation and it will be up to the board as to whether that is enough proof of hardship.

Mr. Peller informed it is up to the applicant to determine whether he wants to continue or not. Mr. Hill agreed to table and waive the 61 day rule.

The secretary read the legal notice as it appeared in the Daily Gazette on July 11, 2013.

- 7) An application from Menneto Powersports for variances from Section 208-50.3;**
1) Part c – side yard setback to building, required=30'; available=12';variance req=18';
2) Part c – side yard setback to parking = 20'; available = 8', variance req = 12';
3) Section 208-50.5; 15' landscaping buffer required along sides; 0' available; variance required = 15'.
Property is located at 1757 Route 9, Clifton Park, NY 12065 (Permit #80927)

The application was presented by Mr. Joseph Danible, from Environmental Design Partnership, representing Menneto Powersports. He introduced Mike Menneto, owner of Menneto Powersports.

Mr. Danible informed the building was originally an Agway in 1983, and Mr. Menneto purchased it 13 years ago to use it to sell ATV's, motorcrafts, etc. Mr. Menneto now wishes to expand to add other products. He pointed out the existing building complied with code until the

90's. He listed they are looking for three variances: south side yard setback of 18'; side yard setback to parking of 12.6' to the air condenser and 15' buffer variance.

Mr. Danible discussed the southern property line where there is a wood retaining wall that bisects and there is 4' for lawn. On top of the wall is 2 ½ feet of area maintained as lawn. He added there is nothing they can do to create a buffer. He contended planting shrubs on the retaining wall will end up with them encroaching into the parking lot and the roots will destroy the structure of the retaining wall. He said he discussed this with the Planning Board and they will subject it to their interpretation as to what they want as a landscape buffer. On the north side, they would have to cut down trees and put in new landscaping and again, they would leave that up to the Planning Board.

Mr. Cifor asked about the expansion and what was the offset on the northern property line.

Mr. Danible answered they plan to get rid of the "jog" in the building and continue it with a straight line. They would go into the 30' but it would still be less than the 12' they are looking for in that area.

Mr. Lemire commented that as it is currently drawn the new proposed building itself would not need a variance, but adding on to it would cause it to be non-conforming. Mr. Danible agreed and said the jog is unusable space.

Mr. Danible explained the boundaries of the property line to Mr. Gifford, trees and fence in relation to the neighbor, Estoria.

Mr. Strother informed he had walked the site and it looks very natural and has plenty of green space. He went on to say it is commercial and addresses some of the safety requirements. He asked for the reason they are building. Mr. Menetto responded that it was for fire safety as the building is turned the wrong way and they couldn't get fire apparatus around it.

Mr. Myers indicated he has no problem with the application.

Mr. Dudick also had walked the property and didn't have a problem with it. He read the county letter which indicated there would be no significant adverse impact. The letter dated July 16, 2013 was signed by Mike Valentine.

Mr. Dudick announced the public hearing and asked for comments. There were none. Mr. Dudick made the motion to close the public hearing. Mr. Gifford seconded. All approved. Public hearing closed.

Mr. Strother made the motion to approve the application as submitted. Mr. Lemire seconded.

Ayes: Fantini, Cifor, Dudick, Strother, Lemire Noes: none
Application approved as submitted.

The secretary read the legal notice as it appeared in the Daily Gazette on July 11, 2013.

8) An application from Maria & Stephen Murdza for a variance from required 80' setback for accessory structure per Section 208-12A. No maps available, staff has field verified sketch provided. Proposed tub location is 60' from property line. Variance required =20'. Property is located at 269 Lapp Road, Clifton Park, NY 12065 (Permit#80928)

The application was presented by Maria Murdza, owner of the property.

Mrs. Murdza informed they wish to install a hot tub. She stated they are on a corner lot and didn't realize they need to be 80' from both sides. She asserted they would have to put the hot tub in the woods to meet code and the woods are wet. She explained they want to take the back half of their deck off, put in a slab and install the hot tub.

Mr. Lemire asked about the location and Mrs. Murdza showed on the map. She said they will put in a privacy fence.

Mr. Strother asked if there will be a covered structure around it. Mrs. Murdza said there will not be.

Mr. Gifford asked if they need a fence. Mrs. Murdza answered they will put one around it.

Mr. Dudick announced the public hearing and asked for comments. There were none. Mr. Dudick made the motion to close the public hearing. Mr. Lemire seconded. All approved. Public hearing closed.

Mr. Myers informed he had verified the dimensions and all is ok.

Mr. Lemire made the motion to approve the application as submitted. Mr. Gifford seconded.

Ayes: Lemire, Strother, Dudick, Cifor, Fantini Noes: none
Application approved as submitted.

The board deferred approval of the minutes for June 4, 2013 due to lack of quorum of members present at that meeting.

The next meeting is August 20, 2013.

Mr. Lemire made the motion to adjourn. The motion was seconded by Mr. Gifford. The meeting was adjourned at 10:50 pm.

Respectfully Submitted,

Susan White
Secretary

cc: Town Clerk, Town Board, Town Attorney, Zoning Board Members, Joel Peller, Counsel, Steve Myers, Department of Building and Development, ECC, Assessor, Highway